

No. 14083

United States
Court of Appeals
For the Ninth Circuit.

JESUS ELIZARRARAZ,

Appellant,

vs.

HERBERT BROWNELL, JR., as Attorney General
of The United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED



No. 14083

United States
Court of Appeals
For the Ninth Circuit.

JESUS ELIZARRARAZ,

Appellant,

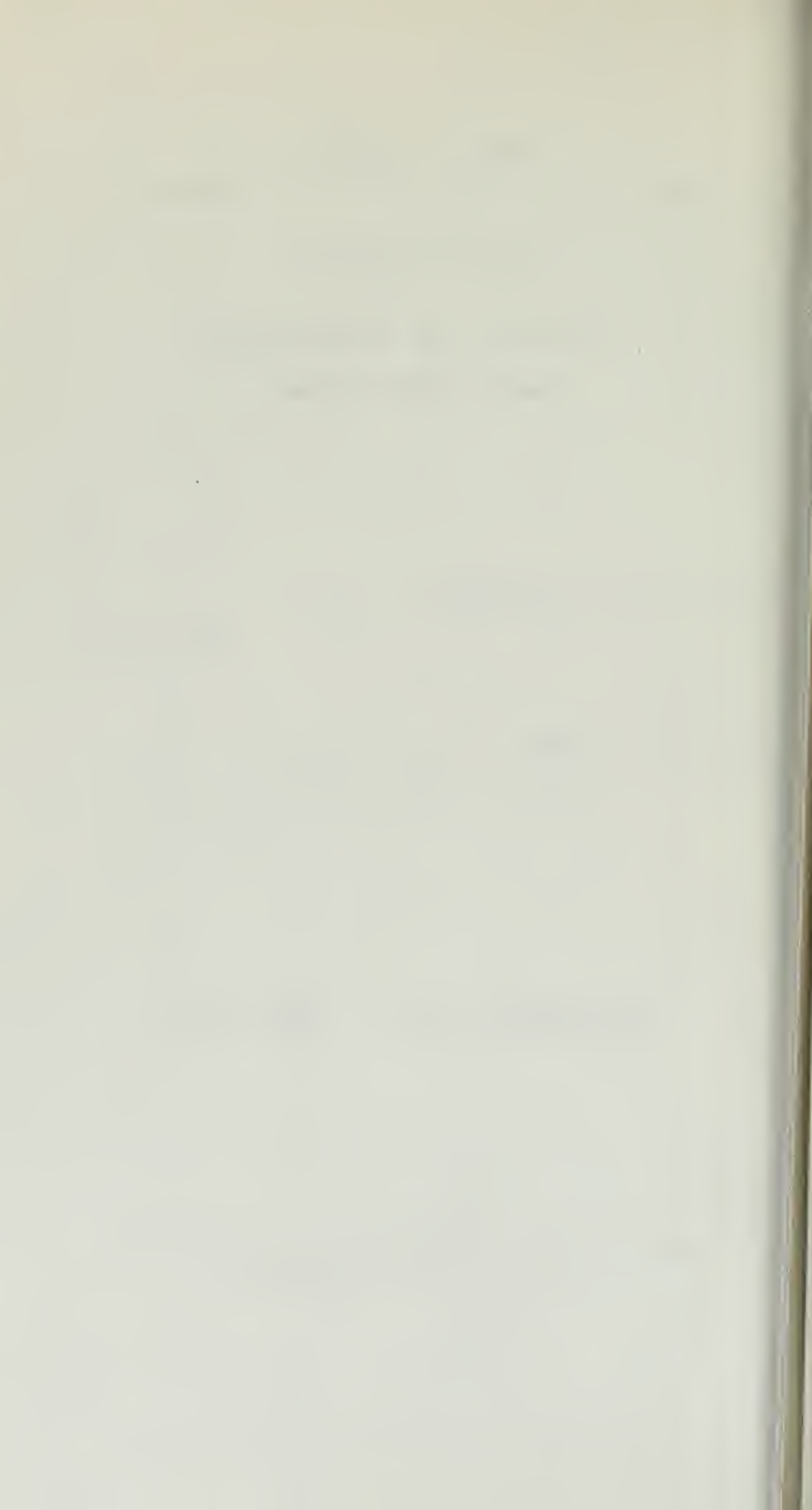
vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of The United States,

Appellee.

Transcript of Record

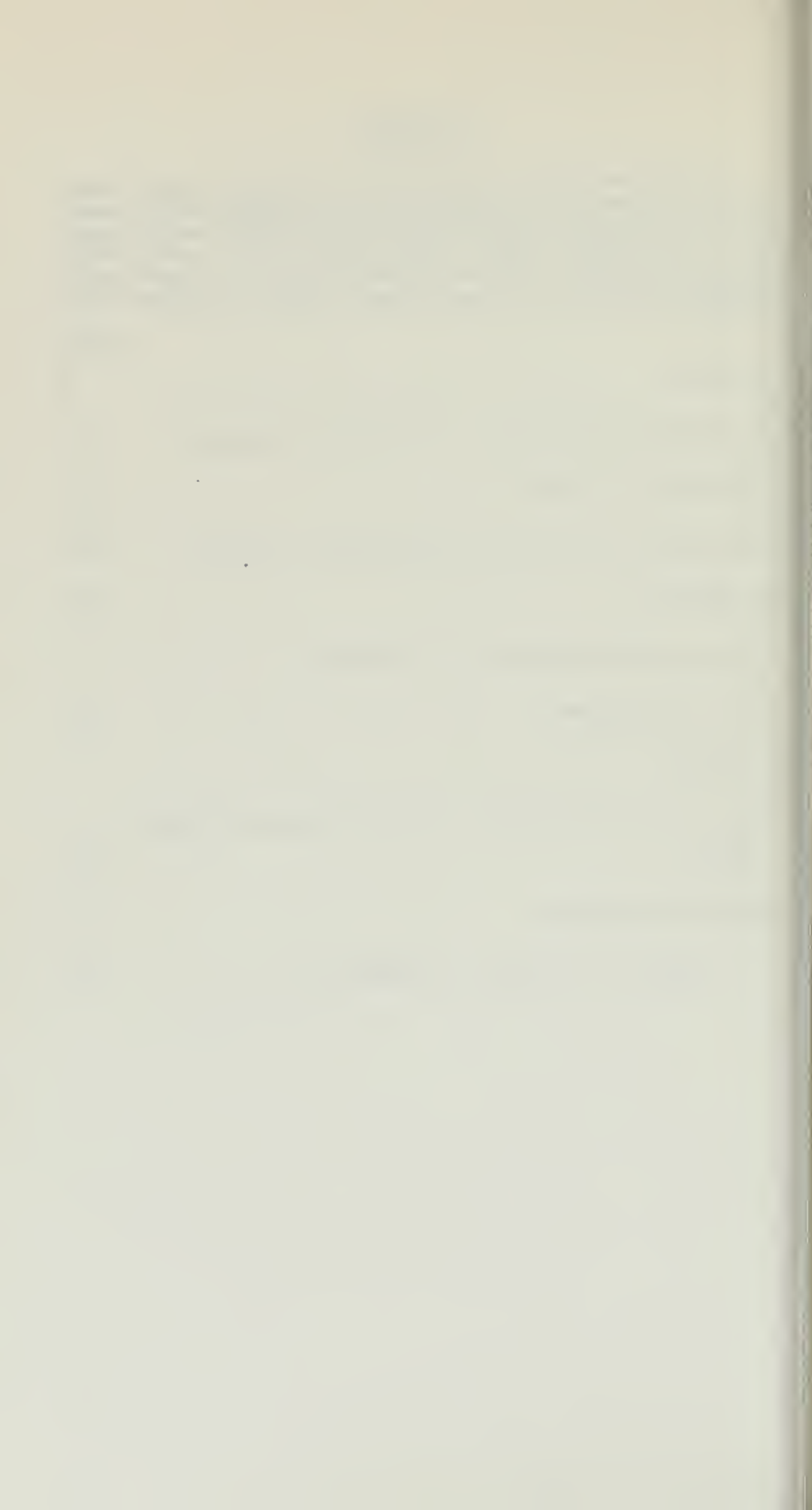
Appeal from the United States District Court for the
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JOHN F. SHEFFIELD,
412 West Sixth Street,
Los Angeles 14, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;

CLYDE C. DOWNING,
ROBERT K. GREAN,
Assistants United States Attorney;
600 Federal Bldg.,
Los Angeles 12, Calif.



In the United States District Court, Southern
District of California, Central Division

No. 14488—PH

JESUS ELIZARRARAZ,

Plaintiff,

vs.

JAMES T. McGRANERY, in the Capacity of the
Attorney General of the United States,

Defendant.

PETITION FOR DECLARATION OF UNITED
STATES NATIONALITY UNDER SEC-
TION 503, NATIONALITY ACT OF 1940,
TITLE 8 U.S.C. 903

Plaintiff above named complains of defendant
above named and for cause of action alleges:

I.

That the defendant is now and at all times herein
mentioned for the purpose of this proceeding, has
been the Attorney General of the United States of
America.

II.

That the plaintiff, Jesus Elizarraraz, is a national
of the United States having been born in the City
of Los Angeles, County of Los Angeles, State of
California, on the 9th day of November, 1912.

III.

That this petition and proceeding is filed pursuant

to and under the authority of Section 503 of the Nationality Act of 1940 [2*] (54 Stat. 1471, Title 8 U.S.C. Section 903).

IV.

That the defendant in his capacity as the Attorney General of the United States and as the Executive Head of the Department of Justice, has denied the plaintiff his rights and privileges as a national of the United States in that he has decided and determined that the plaintiff is not a national of the United States.

V.

That the plaintiff herein is a permanent resident of the City of Los Angeles, County of Los Angeles, State of California, and is a permanent resident of the district within which is located the above entitled District Court of the United States.

VI.

That plaintiff is desirous of having the above-entitled court declare him to be a national of the United States under Section 503 of the Nationality Act of 1940.

Wherefore, plaintiff prays judgment against the defendant as follows:

1. That plaintiff be declared by the above-entitled court to be a national of the United States.

2. That any and all proceedings in the Department of Justice, Immigration and Naturalization

*Page numbering appearing at foot of page of original Certified Transcript of Record.

Service be suspended until a final determination be had in the above-entitled proceeding.

3. For such other and further relief as may in the discretion of the court seem meet and just in the premises.

/s/ JOHN F. SHEFFIELD,
Attorney for Plaintiff. [3]

State of California,
County of Los Angeles—ss.

Jesus Elizarraraz being by me first duly sworn, deposes and says: that he is the plaintiff in the above-entitled action; that he has read the foregoing petition for declaration of U. S. Nationality under Section 503, Nationality Act of 1940, 8 U.S.C. 903 and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it is true.

Subscribed and sworn to before me this 30th day of August, 1952.

/s/ JESUS ELIZARRARAZ.

[Seal] /s/ JOHN F. SHEFFIELD,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed September 8th, 1952. [4]

[Title of District Court and Cause.]

ANSWER TO PLAINTIFF'S COMPLAINT

Comes now the defendant, James P. McGranery, in the capacity of the Attorney General of the United States, through his attorneys, Walter S. Binns, United States Attorney for the Southern District of California, Clyde C. Downing and Robert K. Grean, Assistants United States Attorney for the Southern District of California, and in answer to plaintiff's complaint herein admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraph I of plaintiff's complaint.

II.

Referring to the first averment of paragraph II of said complaint, denies that the plaintiff is a national of the United States. Referring to the remainder of the allegations in paragraph II of said complaint; defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and on that ground denies the remainder of the allegations of paragraph II of said complaint. [5]

III.

Defendant neither admits nor denies the allegations contained in paragraph III of plaintiff's com-

plaint, on the ground that said allegations are conclusions of law.

IV.

Admits that the Attorney General of the United States has determined that the plaintiff is not a national of the United States, but denies that the plaintiff's rights and privileges as a national of the United States have been denied him on the ground that said allegation is a conclusion of law.

V.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of said complaint, and on that ground denies each and every allegation therein contained.

VI.

Denies that plaintiff is entitled to be declared a national of the United States by this Court.

For a Further, Separate, Second and Affirmative Defense, Defendant Alleges:

I.

That plaintiff, Jesus Elizarraraz, was born to parents who were at the time of his birth natives and citizens of Mexico, and that the plaintiff at birth was a national of Mexico.

II.

That in or about 1932 plaintiff took up residence in Mexico, and in 1940 became a member of the Mexico City Police Force.

III.

That plaintiff entered on duty as a police officer in the Federal District of Mexico on April 1, 1943, and served in that capacity until March 11, 1947.

IV.

That plaintiff accepted and performed the duties of a police officer [6] under the Government of the Republic of Mexico.

V.

That said employment under the Government of Mexico was employment for which only nationals of Mexico were and are eligible.

VI.

That the plaintiff thereby expatriated himself and lost his claim to nationality of the United States, pursuant to Section 401 (d) of the Nationality Act of 1940 [8 U.S.C. 801 (d)].

For a Further, Separate, Third and Distinct Defense, Defendant Alleges:

I.

That plaintiff's complaint fails to state a claim upon which relief can be granted.

Wherefore, defendant prays that plaintiff's complaint be dismissed, the relief prayed for therein be denied, and for such other relief as to the Court seems just in the premises.

WALTER S. BINNS,
United States Attorney,

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ ROBERT K. GREAN,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed November 10, 1952. [7]

[Title of District Court and Cause.]

TRIAL STIPULATION

It Is Hereby Stipulated, by and between the above-named parties, through their respective counsel, that the following facts are agreed to and require no proof:

1. Plaintiff was born at Montebello, California, on November 9, 1912;
2. At the time of plaintiff's birth, his parents were natives and citizens of the United States of Mexico;
3. Some time in 1932 plaintiff took up residence in the United States of Mexico and thereafter, on April 1, 1943, entered on duty as a police officer of the police force of the Federal District of the United States of Mexico, and served in that capacity until some time either in 1945 or 1947; and
4. Said service took place during a period of

time when the United States of Mexico was at war, it being agreed that Mexico declared war on May 22, 1942. [9]

It Is Further Stipulated that there are attached hereto and introduced into evidence as defendant's exhibits the following items:

1. Translation of pertinent portions of the Political Constitution of the United States of Mexico, particularly Articles 30 and 32;

2. Certificate dated February 23, 1953, authenticated by the Vice Consul of the United States of America at Mexico City, in the Spanish language with a certified translation attached thereto;

3. Transcripts from the publication "Regulations of the Preventive Police of the Federal District," certified as true and correct by the Vice Consul of the United States of America, with certified translation attached thereto; and

4. Certified copy of the personnel record of the plaintiff as it appears in the files of the Federal District of Mexico, authenticated by the Vice Consul of the United States of America, with certified English translation attached thereto.

It Is Further Stipulated that those exhibits enumerated above which are excerpts of the laws of Mexico or regulations of the police force are true and correct copies thereof.

It Is Further Stipulated that if William B. Stern were called as a witness, he would testify as set out

in his affidavit, which may be admitted in evidence as defendant's Exhibit 5, but to which counsel for the plaintiff reserves the right to object to the weight and sufficiency thereof.

Dated: March 9, 1953.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief, Civil Division;

/s/ ROBERT K. GREAN,
Assistant U. S. Attorney,
Attorneys for Defendant.

/s/ JOHN F. SHEFFIELD,
Attorney for Plaintiff.

It Is So Ordered:

This day of March, 1953.

.....
United States District Judge.

State of California,
County of Los Angeles—ss.

America I. Thatcher, being first duly sworn, deposes and says that she is an official interpreter and translator for the County of Los Angeles, State of California; that she has full and complete knowledge of the English and Spanish languages; that she has translated the attached document from

Spanish to English, and that the foregoing is a true and correct translation of said document.

/s/ AMERICA I. THATCHER.

Subscribed and sworn to before me this 5th day of March, 1953.

[Seal] /s/ BARBARA S. MURPHY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 8, 1955. [11]

Translation from Spanish.

“Political Constitution of the
United States of Mexico”

(with all amendments up to September 30, 1949)

Title I.

Chapter II.

Regarding Mexicans

Article 30. Mexican nationality is acquired by birth or naturalization.

A. The following are Mexican by birth:

1. Individuals born within the territorial limits of the Republic, irrespective of the nationality of their parents.

II. Individuals born in foreign countries of

Mexican parents; of Mexican father and alien mother; or of Mexican mother and unknown father.

III. Individuals born on board Mexican war or merchant vessels or aircraft.

B. The following are Mexican by naturalization:

I. Aliens who obtain naturalization papers from the Ministry of Foreign Relations.

II. Alien women who marry Mexicans and live or establish domicile within the territorial limits of the republic.

Article 31.

Article 32.

Mexicans shall be preferred under equal circumstances to aliens for concessions of all kinds, and for all Government posts, offices or commissions where citizenship is not indispensable. No alien may serve in the army, nor in the police corps, nor in any other department of public safety during times of peace.

Only Mexicans by birth may serve in the navy or national air force or hold any post or commission therein. The same requisite shall apply to captains, pilots, masters, chief engineers, mechanics, and, in a general way, to the entire crew of any vessel or aircraft sailing under the Mexican flag or the Mexican marine flag. It shall likewise be necessary for all port captains, all persons engaged in pilotage work and commanders of aerodromes to be Mexicans by birth, likewise for any person who discharges the

duties of customs agent in the Republic. (Amended by decree dated December 31, 1943, and published in "Diario Oficial" of February 10, 1944.) [12]

State of California,
County of Los Angeles—ss.

America I. Thatcher, being first duly sworn, deposes and says, that she is an official interpreter and translator for the County of Los Angeles, State of California; that she has full and complete knowledge of the English and Spanish languages; that she has translated the attached document from Spanish to English, and that the foregoing is a true and correct translation of said document.

/s/ AMERICA I. THATCHER.

Subscribed and sworn to before me this 5th day of March, 1953.

[Seal] /s/ BARBARA S. MURPHY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 8, 1955. [13]

Translation from Spanish.

Stamp of the Federal Executive Power,
Mexico, D. F.,
United States of Mexico.

Division: Police Headquarters of the Federal District.

Section: Private Secretary's Office.

Subject Matter: Certification.

The Citizen General of Division Miguel Molinar S., Chief of Police of the Federal District:

Certifies

That the Regulations of the Preventive Police of the Federal District, have been in force since they were decreed by the Citizen General of Division Manuel Avila Camacho, then President of the United States of Mexico, on November 12, 1941, and published in the Official Journal on December 4 of the same year 1941, various amendments having been made to the same by decrees dated 2nd and 25th of April, 1942, 18th of February, 14th of March, 22nd and 30th of December, 1944, and 9th of March, 1945.

The Certificate herein is issued in Mexico City, Federal District, on the twenty-third day of the month of February, nineteen hundred and fifty-three.

[Illegible Signature]

Gen. of Div. Miguel Molinar S.

Stamp which reads:

Police Headquarters,
Division of the Federal District,
United States of Mexico.

Headquarters.

aas. [14]

State of California,
County of Los Angeles—ss.

America I. Thatcher, being first duly sworn, deposes and says that she is an official interpreter and translator for the County of Los Angeles, State of California; that she has full and complete knowledge of the English and Spanish languages; that she has translated the attached document from Spanish to English, and that the foregoing is a true and correct translation of said document.

/s/ AMERICA I. THATCHER.

Subscribed and sworn to before me this 5th day of March, 1953.

[Seal] /s/ BARBARA S. MURPHY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 8, 1955. [17]

Translation from Spanish.

Transcripts made from the Publication
(Regulations of the Preventive Police* of the
Federal District)

“Reglamento de la Policia Preventiva del D. F.”

Regulations of the Preventive Police of the Federal
District.

At the margin: A seal with the national shield
of Mexico reading: “United States of Mexico—
Presidency of the Republic.”

Manuel Avila Camacho, Constitutional President
of the United States of Mexico, to its inhabitants
hereby makes known:

That based upon the provisions of articles 21, 24,
subdivision III, and 7 Transitory of the Organic
Law of the Federal District and Territories, dated
December 31, 1928, and * * * I have deemed it
proper to issue the following * * *

Chapter II.

Requirements

Article 31.

The requirements for membership in the police
force are as follows:

I. The applicant must be a Mexican citizen by
birth.

II. The applicant must be 21 years of age, with-
out having yet reached his 35th birthday, and must

*Translator's note. City Police.

have full exercise of his (or her) civil and political rights at the time of appointment.

III. The applicant must have completed and passed the necessary studies given at the police academy.

IV. The applicant must have executed and agreed upon the respective contract for enrollment (or registration).**

V. The applicant must be of reputable good conduct.

VI. The applicant must not have been convicted for an infamous crime, in final judgment, or be under prosecution.

VII. The applicant must not be suffering from a contagious disease nor have any physical defects which might handicap said applicant in the performance of his duty.

Transitory Provisions

Article 3.

The Organic Regulations for the Federal District Police Department, promulgated into law on the twenty-second day of the month of September, nineteen hundred and thirty-nine, are hereby abrogated.

In compliance with the provisions of Subdivision I of Article 89 of the Political Constitution of the United States of Mexico, and for their due publication and enforcement, I hereby promulgate the Regulations herein contained, at the official resi-

**Can be translated either way.

dence of the Federal Executive Power in the City of Mexico, Federal District, on the 12th day of November nineteen hundred and forty-one. Manuel Avila Camacho. Initial.—Give execution thereto. Chief of the Department of the Federal District, Javier Rojo Gomez. [18]

Initial.

Decree of April 2nd, 1942, published in the "Diario Oficial" (Official Journal) on the 25th of the same month and year. [19]

State of California,
County of Los Angeles—ss.

America I. Thatcher, being first duly sworn, deposes and says, that she is an official interpreter and translator for the County of Los Angeles, State of California; that she has full and complete knowledge of the English and Spanish languages; that she has translated the attached document from Spanish to English, and that the foregoing is a true and correct translation of said document.

/s/ AMERICA I. THATCHER.

Subscribed and sworn to before me this 5th day of March, 1953.

[Seal] /s/ BARBARA S. MURPHY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 8, 1955. [22]

Translation from Spanish.

(Front)

Register of the Personnel of the Department
of the Federal District

(Photograph)

(Illegible)

_____ of birth: Los Angeles, California.

Date of birth: November 19, 1912.

Domicile: Calle Republica #13 Col. Portales.

Profession: Farmer.

right thumb

V 4333

V 3222

(Fingerprint)

J. Jesus Elizarraraz Vasquez. 1912.

(Reverse)

File No. 58—

Name: J. Jesus Elizarraraz Vazquez.

mchg. Employment: Police officer.

Offices: Police Headq.

Salary:

(Promotion)* (Appointment) Apr. 1, '43.

(Dismissal)* (Termination) Jan. 1, '44.

mchg. Employment: Police officer.

Offices: 6th Company Police Headq.

Salary: 120.00.

(Promotion)* (Appointment) Jan. 1, '44.

(Dismissal)* (Termination) Mar. 11, '47. [23]

*Translator's note: Can be translated either way.

Translation from Spanish.

File J—1/13 1/58586

(Dismissal or Termination /47)

Archive

Department of the Federal District
Personnel Office
Year 1944

Elizarraras Vazquez, Jesus

Police

Police Headquarters

Folder reviewed—

Cards reviewed (illegible initials)

File contains Pages
Number and letter [24]

Translation from Spanish.

Department of the Federal District
Police Headquarters
Police School (or Academy)* No. 59.

(Photograph front view) (Photograph side view)

(Enrollment)*

(Registration): Police Candidate Jesus Elizarraras
Vazquez.

*Translator's Note: Can be translated either way.

Native of Penjamo, Gto.

Son of: Pascual Elizarraras, and of Conrada Vazquez.

Age: 30 years.

Status: Married.

Occupation: Employee (or clerk).

Height: 1. -0.

Weight: 75.5 Kg.

Color: Olive skin.

Hair: Dark brown.

Forehead: Large.

Eyebrows: Black—thin.

Eyes: Light brown.

Nose: Rectilinear.

Mouth: Medium.

Chin: Round.

Distinguishing marks: None.

“Special Services”

Was admitted as Pupil-Police Officer Candidate April 1st, 1943.

Has agreed to the following clauses:

I. To take the course prepared by the Plan of Instruction of the School for a period of not less than three months, after previous examination for admission to which he will be subjected.

II. He obligates himself to attend his classes daily and to observe good conduct, without which

requirement he will not have the right to aspire to the post of Police Officer.

III. To have the right to promotion (or appointment)* to police officer he must have passed all the different subjects at the end of the course.

IV. As an inducement for his studies, he shall be paid (one peso daily) during all the time that his instruction lasts, and he shall be provided, besides, with the respective clothing.

V. In order to guarantee what is set forth in the previous paragraph, the interested party shall post the respective security or bond in the amount of (One Hundred Fifty Pesos), total amount of three months instruction, plus Sixty Pesos, value of the Equipment.

VI. If in the first month he has not Not Passed the subjects in the course, he shall be dismissed (or terminated)* and the interested party or his bondsman obligates himself to pay the total amount for the (PRE) or the one peso daily given to him.

VII. Upon Accepting the above Conditions, I bind myself to render My Services to the Police Corps, for a minimum period of 2 years, and in agreement therewith I sign before the witnesses who are shown below. Mexico, D. F., April 1st, 1943.

*Can be translated either way.

Right Thumb.

(Fingerprint).

/s/ JESUS ELIZARRARAZ,
Signature of the interested
party.

Witness:

/s/ JESUS VILLA.

Witness:

[Signature Illegible.]

Translation from Spanish.

The Undersigned Certifies that the party who has made the registration herein is in condition to serve in the Police Force because he does not suffer chronic or contagious diseases or lameness which might hinder his freedom of action, and has no physical defect of a monstrous nature and is not deaf, an Idiot or Insane.

[Illegible Signature,]
Physician and Surgeon.

Dates

Day.... Month..... Year.... Absences.....

Dates

Day.... Month..... Year.... Penalties.....

The Chief of the Office of Personnel and Supplies, of the Police Headquarters for the Federal

District, of which Gen. of Inf. Fausto Cardenas Sagaseta, is Chief,

Certifies

That the registration herein is that of Jesus Elizarraras Vazquez, Original, which was opened for the interested party upon his entering the Corps.

Mexico, D. F. 1st of April, 1943.

Approved:

Chief of Police.

Chief Col. Int. Pol.

[Illegible Signature.]

ARTURO ROMERO LOZA.

I Attest:

Chief of Supplies, Inf. Col.

[Illegible Signature]

FAUSTO CARDENAS
SAGASETA.

(Reverse)

Department of the Federal District—
Personnel Office.

The person mentioned in this registration was presented on this date at this office for his identification.

Mexico, D. F., April 1st, 1943.

[Illegible Signature,]

Chief of the Office. [26]

Translation from Spanish.

Stamp: Federal Executive Power,
Mexico, D. F., United States of
Mexico.

Department of the Federal District.

Division: Police Headquarters of the Federal Dis-
trict.

Section: Supply.

Number of Communication: 12383.

File: N-3.

Subject Matter: Requesting authorization to pro-
mote (or appoint)* C. Jesus Elizarraras Vaz-
quez as Police Office Candidate.

59

Mexico, D.F., 1st of April, 1943.

To the C. Chief of the Department
of the Federal District,
Personnel Office.
In Person.

I am enclosing herein in 13 pages, the file of C. Jesus Elizarraras Vazquez, so that the Department under your esteemed care, will authorize his promotion (or appointment)* as Police Candidate

*Translator's Note: Can be translated either way.

under date of the 1st inst., by virtue of the fact that he passed the respective examination for admission.

Very truly yours,

Effective Suffrage.

No Re-election

Col. Acting Chief of Police.

/s/ ARTURO ROMERO L.

ARTURO ROMERO LOZA.

Copy to the Paymaster General of this Headquarters, for his information.

In Person.

Gag.

Translation from Spanish.

Stamp: Federal Executive Power
Mexico, D. F., United States of
Mexico.

(Stamp: General Register 1598.)

Division: Police Headquarters of the F. D.

Section: Supplies.

No. of Communication: 19792.

File: N-3.

Subject Matter: Advising dismissal (or termination)* of C. Jesus Elizarraras Vazquez as Police officer Candidate and his Promotion (or appointment)* as Police Officer.

*Can be translated either way.

17641

Mexico, D. F., June 2, 1943

Chief of the Department of the
Federal District,
Personnel Office,
In Person.

For your information and approval, I am pleased to advise you that I have ordered that Candidate Number 59, C. Jesus Elizarraras Vazquez, be Dismissed (or terminated)* in such capacity and be promoted (or appointed)* as Police Officer under date of the 1st inst., by virtue of his having passed the last examination to which he was subjected in the Police School.

Very truly yours,

Effective Suffrage.

No Re-Election.

Col. Acting Chief of Police,

/s/ ARTURO ROMERO,
ARTURO ROMERO LOZA.

Stamp:

Department of the Federal District,
June 15, 1943,
Personnel Office.

Copy to the General Paymaster of this Headquarters, for his information.

In Person.

*Translator's Note: Can be translated [28] either way.

Translation from Spanish.

58586

Stamp:

Government of the Federal District,
Police Headquarters,
United States of Mexico.

Supplies.

The C. General Chief of Police of the Federal District has taken the determination to dismiss (or terminate)* on this date the Polyglot Police Officer 3983 of the Grenadiers Jesus Elizarraras Vazquez at his request.

Mexico, March 11, 1947

Salvador Espinoza de Los Monteros, Chief of Supplies Section of the Police Headquarters.

Certifies

That Polyglot Police Officer 3983 of the Grenadiers, C. Jesus Elizarraras Vazquez, referred to in the above determination, has been dismissed (or terminated)* on this date.

Mexico, March 11, 1947.

[Illegible Signature]

SEM/CRH/eg.

*Translator's Note: Can be translated [29] either way.

Translation from Spanish.

58586

(Illegible pencilled notations.)

Mexico, D. F., March 18, 1952.

C. Chief of the Personnel Office
of the Department of the F. D.
In person..

J. Jesus Elizarraraz Vazquez, respectfully requests that a certificate be issued to him for the services he rendered in the Department of the F. D., from the year 1940 to 1947, as police officer attached to the Police Headquarters.

(Private Matter)

Thanking you for your attention to this matter,
I am your attentive and true servant,

[Illegible signature.]

Stamp: Government of the Federal District, Personnel Office, March 24/52, Processing Office specified.

Stamp: Department of the Federal District, March 18. 1952, Personnel Office. [30]

Translation from Spanish.

Personnel Office of Processing,
J-24/ (illegible number)

Certificate for Services

Mexico, D. F., March 26, 1952.

C. J. Jesus Elizarraraz Vazquez.

In Person.

In accordance with your respective request, I advise you that in the archive of this office there is a record that the following appointments were conferred upon you, on the dates which are mentioned:

Employment: Police officer.

Office: Police Headq.

Salary:

(Appointment)* (Promotion) Apr. 1, '43.

(Termination)* (Dismissal) Jan. 1, '44.

Employment: Police officer (6th Company).

Office: Police Headq.

Salary: \$120.00.

(Appointment)* (Promotion) Jan. 1, '44.

(Termination)* (Dismissal) Mar. 11, '47. Left.

Very truly yours,

Effective Suffrage.

No Re-Election.

Chief of the Personnel Office.

/s/ E. CORONA,

ERNESTO CORONA.

Stamp: Department of the F. D. (illegible) 1952,
Illegible.

*Translator's note: Can be translated either way.

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM B. STERN

State of California,
County of Los Angeles—ss.

William B. Stern, being first duly sworn, deposes and says:

I.

I studied law at the Universities of Wurzburg, Munich and Berlin from 1928 to 1932 and received the degree of doctor of both laws from the first-mentioned University in 1933. I have been the Foreign Law Librarian of the Los Angeles County Law Library since 1939. As such I am in charge of that Library's collection of books on foreign law which total well nigh 100,000 volumes. Among them, there are several thousand volumes of books on Mexican law. In my capacity as Foreign Law Librarian, I am answering questions of attorneys and others on foreign law and I have testified on foreign law in the United States District Court for the Southern District of California, the Superior Courts of the State of California in Los Angeles, San Bernardino, Ventura, Orange, San Diego, Kern and Alameda Counties and in the City and County of San Francisco, in the Municipal Court of Los Angeles [43] and in courts of the State of Oregon and the State of Montana, and elsewhere. I have written several articles on foreign, including Mexican law which were published in legal periodicals, one of which in Spanish translation in the law review of the law

school of the Mexican National University. I am familiar with the law of Mexico relating to nationality and the Federal District of Mexico, and at the request of Robert K. Grean, Assistant United States Attorney, Esq., Los Angeles, California, I have informed myself with the laws and regulations concerning the police force in the Federal District of Mexico and Mexican federal laws and regulations concerning the latter police force. I am familiar with the Spanish language.

II.

I have been informed by Robert K. Grean, Esq., Assistant United States Attorney, Los Angeles, California and John F. Sheffield, Esq., Attorney at Law, Los Angeles, California about the following factual situation and have been asked by them to answer the following questions:

Assuming (1) that plaintiff was born at Montebello, California, on November 9, 1912; (2) that at the time of plaintiff's birth, his parents were natives and citizens of the United Mexican States; and (3) that some time in 1932 plaintiff took up residence in the United Mexican States and thereupon on April 1, 1943, entered on duty as a police officer of the police force of the Federal District of the United Mexican States and served in that capacity until some time in either 1945 or 1947:

(a) What is the applicable Mexican law concerning the question whether such employment in the police force of the Federal District of the

United Mexican States is employment under the Government of Mexico or a political subdivision thereof?

(b) Was plaintiff during the time of said employment deemed a Mexican national under the Mexican law concerning nationality?

(c) What are the rules of Mexican law, and any exceptions from or qualifications of these rules, concerning nationality as a requirement for plaintiff's employment in said police force?

(d) In particular, what are the rules referred to under (c), supra, in the case that plaintiff served in a special service of said police force? [44]

I have also examined a series of photostatic documents which are bound together and certified as being "a photostatic copy of Personal Record of Jesus Elizarraras Vazques as it appears in the Files of the Federal District of Mexico" by Alan E. Holl, Vice-Consul of the United States of America on the 18th of February, 1953, and found the English translations attached thereto to be substantially correct translations.

III.

I am answering these questions as follows:

Question (a):

Under the Political Constitution of the United Mexican States of 1917, Title II, Chapter II, entitled Of the integral parts of the Federation and the National Territory, Article 43, the Federal District is an integral part of the Mexican Federation.

Under the same Constitution, Title III, Chapter II, entitled Of the legislative power, Section III, entitled Of the powers of Congress, Article 73,

Congress has the power

VI. (as amended by decree published in the Mexican Official Gazette of December 15, 1934, To legislate in all matters relating to the Federal District and Territories, subject to the following rules: a. The government of the Federal District shall be in the charge of the President of the Republic who shall exercise it through the organ and organs which shall be determined by a law relating thereto.

Under the Organic Law for the Department of the Federal District in Execution of the First Subdivision of Fraction VI of Article 73 of the Constitution of December 31, 1941, Article 5,

The President of the Republic shall have the Government of the Federal District in his charge and shall exercise it through a functionary who shall be called Chief of the District Department, subject to the rules of the present Law.

Under Article 23,

The following are functions of the Department of the Federal District:

(3) The direct organization and development in the Federal District of the services of police * * *

Under Article 35, [45]

For the dispatch of the business of administrative nature of the Department of the Federal District and for the efficient attention to public services which are entrusted to it, there shall be the following general divisions:

(13) The Chief Office of Police.

The Federal District of the United Mexican States is, therefore, a political subdivision of the United Mexican States and employment in its police force constitutes employment by a political subdivision of the United Mexican States.

Question (b) :

This question is answered

(aa) by the Political Constitution of the Mexican States of 1917, Title I, Chapter II, entitled Of Mexicans, Article 30, as amended by decree published in the Mexican Official Gazette of January 18, 1934; this article has been translated in substantially correct manner by Miss America J. Thatcher in her Affidavit of March 5, 1953, with the exception that the second line of said translation should read in Article 30:

“A. The following are Mexicans by birth.”

and the tenth line thereof should read:

“B. The following are Mexicans by naturalization:”

(bb) by the Mexican Law of Nationality and Naturalization of 1934, Chapter I, entitled Of Mexicans and of Aliens, Article 1:

The following are Mexicans by birth:

II. Those who are born in a foreign country of Mexican parents, of a Mexican father and alien mother, or of a Mexican mother and an unknown father.

Question (c):

This question is answered

(aa) by the above-mentioned Constitution, Title and Chapter, Article 32, first paragraph, as amended by decree published in the Mexican Official Gazette of December 15, 1934:

Mexicans shall be preferred to aliens, if circumstances are equal, for any kind of concessions and for all kinds of Government employment, posts or commissions for which citizenship is not indispensable. In times of peace, no alien may serve in the Army or in the police or public security forces.

Under the same Title, Chapter IV. entitled Of Mexican citizens, Article 34, a [46] citizen is defined as a Mexican national who has completed 18 years and is married or 21 years and is not married and leads an honest way of life. Under the second sentence of Article 32, first paragraph supra, a non-

Mexican may not serve, inter alia, in the Mexican Army and police forces in time of peace. Under this sentence, laws were passed in Mexico during World War II for the service of non-Mexicans in the Mexican Army, but no such law was passed and no such decree was issued providing for the service of non-Mexicans in the Mexican police forces. The rule mentioned below under (bb) that a police officer in the police force of the Mexican Federal District had to be a Mexican national by birth, was, therefore, not suspended on the basis of the Constitution, *supra*, Article 32, first paragraph, second sentence.

(bb) by the Regulations for the Preventive Police of the Federal District issued on November 12, 1941, by the Mexican President as a decree and published in the Mexican Official Gazette of December 4, 1941, which are still in force and effect except as to certain amendments which are immaterial to this inquiry, Book Two, Title I, Chapter II, entitled Requirements, Article 31, sub-section I:

For membership in the Police it is required:

I—To be a Mexican by birth.

Said Regulations do not contain any qualifications of or exceptions from this rule, nor has this Article been amended since.

However, this requirement of Mexican nationality by birth could have been waived in an individual case or specified classes of cases by Presidential decree. No such Presidential decree is known to me although I have made a search thereof. Such a de-

cree would be indexed in the Mexican Official Gazette only in bi-monthly and not-alphabetical indexes or, if published in the Official Gazette of the Federal District, not indexed at all.

(cc) by Article 77 of the same Regulations:

The Chief of Police shall comply and shall cause compliance with the present regulations.

Question (d)

Under the above-mentioned Regulations for the Preventive Police of the Federal District of 1941, the police force is divided into several groups. Under Article 34, [47]

The Line personnel consists of:

I—Police on Foot.

II—Language Police.

III—Mounted Police.

IV—Motorized Forces.

V—Firemen Forces.

Under the Organic Regulation of Preventive Police of 1939 (Mexican Official Gazette of October 19, 1939), which was superseded by the Regulations of 1941, *supra*, Article 31, similar police groupings and a sixth grouping, called the Transit Police, were called "specialties." This term was not repeated in the 1941 Regulations, *supra*. The word "special" in connection with any sub-division of the police forces was used in the 1941 Regulations, *supra*, only in connection with the Special Admini-

strative Services of the police force in Articles 83, 84 and 145. Under Article 84, the Special Administrative Services have duties in connection with due process proceedings brought against the police. No special rule concerning nationality of police officers or employees is established in the 1941 Regulations, *supra*, concerning any of the police sub-divisions mentioned above or any other police sub-division.

/s/ WILLIAM B. STERN.

Subscribed and sworn to before me this 6th day of March, 1953.

[Seal] /s/ ELSIE POSSNER,

Notary Public in and for Said County and State.

My commission expires 5/21/56.

[Endorsed]: Filed March 9, 1953. [48]

[Title of District Court and Cause.]

FINDINGS OF FACT and CONCLUSIONS OF LAW

The above-entitled case having come on regularly for trial on the 6th day of March, 1953, and for further trial on March 9, 1953, in the above-entitled Court, before the Honorable Peirson M. Hall, Judge presiding, the plaintiff being present and represented by his attorney, John F. Sheffield, and the defendant being represented by his attorneys, Walter S. Binns, United States Attorney, Clyde C. Downing and Robert K. Grean, Assistants United

States Attorney, by Robert K. Grean; and the Court having heard statements of counsel and having received a stipulation of facts, and having received in evidence certified translations of Mexican law and a certified copy of the personnel record of the plaintiff as it appears in the files of the Federal District of Mexico, authenticated by the Vice Consul of the United States, with certified English translation attached thereto, and the Court having further received expert testimony by way of stipulated affidavit concerning Mexican law, and the matter having been further submitted on briefs filed after trial, and it appearing that Herbert Brownell, Jr., as Attorney General of the United States, has [50] been substituted as party defendant in the place of James T. McGranery, and the Court, having heretofore, on July 22, 1953, filed its Order for Judgment, hereby makes its Findings of Fact and Conclusions of Law.

Findings of Fact

I.

That Herbert Brownell, Jr., is the duly appointed qualified and acting Attorney General of the United States, and as such is the head of the Department of Justice and in such capacity is executive head of said Department of Justice.

II.

That the plaintiff, Jesus Elizarraras, was born in the City of Los Angeles, County of Los Angeles, State of California, on the 9th day of November,

1912, and claims permanent residence within such city, county and state, and within the Southern District of California, within which is located the above-entitled District Court of the United States.

III.

That the defendant is seeking to deprive the plaintiff of the right to remain and reside in the United States as a citizen thereof, on the ground that he is not a citizen of the United States.

IV.

That at the time of plaintiff's birth his parents were natives and citizens of the United States of Mexico, and that the plaintiff at said time had dual citizenship, viz: United States citizenship by birth in the United States; Mexican citizenship by virtue of the Mexican nationality of his parents.

V.

That plaintiff took up residence in the United States of Mexico in or about the year 1932, and thereafter, on April 1, 1943, entered on duty as a police officer of the police force of the Federal District of the United States of Mexico, and served in that capacity to March, 1947.

VI.

That the Federal District of the United Mexican States is a political subdivision of the United Mexican States, and employment in its police force [51] constitutes employment by a political subdivision of the United Mexican States, a foreign state within the meaning of Section 801(d) of Title 8, U.S.C.

VII.

That the employment accepted by the plaintiff in the police force of the Federal District of Mexico was employment for which only nationals of Mexico are eligible.

Conclusions of Law

I.

This Court has jurisdiction of the within matter under the provisions of Section 503 of the Nationality Act of 1940 (8 U.S.C. 903).

II.

That the plaintiff while a citizen of the United States by birth therein was also a citizen of Mexico at the time of his birth.

III.

That the plaintiff expatriated himself under the provisions of 8 U.S.C., 801(d), by accepting employment under the government of a foreign state or a political subdivision thereof, to wit, employment as a member of the police force of the Federal District of Mexico, from April, 1943, to March, 1947, employment for which only nationals of Mexico are eligible.

Wherefore, judgment should be against the plaintiff and for the defendant.

Dated this 11th day of August, 1953.

/s/ PEIRSON M. HALL,

United States District Judge.

Affidavit of service by mail attached.

[Endorsed]: Filed August 11, 1953. [52]

In the United States District Court, in and for the
Southern District of California, Central Di-
vision

No. 14488—PH Civil

JESUS ELIZARRARAZ,

Plaintiff,

vs.

HERBERT BROWNELL, JR., in the Capacity of
the Attorney General of the United States,

Defendant.

JUDGMENT

The above-entitled case having come on regularly for trial on the 6th day of March, 1953, and for further trial on March 9, 1953, in the above-entitled Court, before the Honorable Peirson M. Hall, Judge presiding, the plaintiff being present and represented by his attorney, John F. Sheffield, and the defendant being represented by his attorneys, Walter S. Binns, United States Attorney, Clyde C. Downing and Robert K. Grean, Assistants United States Attorney, by Robert K. Grean; and the Court having heard statements of counsel and having received a stipulation of facts, and having received in evidence certified translations of Mexican law and a certified copy of the personnel record of the plaintiff as it appears in the files of the Federal District of Mexico, authenticated by the Vice Consul of the United States, with certified English translation attached thereto, and the Court having further

received expert testimony by way of stipulated affidavit concerning Mexican law, and the matter having been further submitted on briefs filed after trial, and it appearing that Herbert Brownell, Jr., as Attorney General of the United States, has [54] been substituted as party defendant in the place of James T. McGranery, and the Court, having heretofore, on July 22, 1953, filed its Order for Judgment, and having heretofore made and filed its Findings of Fact and Conclusions of Law;

It is hereby ordered, adjudged and decreed:

1. That the plaintiff, Jesus Elizarraraz, is not a national of the United States, he having expatriated himself under the provisions of 8 U.S.C., 801 (d), by accepting employment and serving as a member of the police force of the Federal District of Mexico from April, 1943, to March, 1947, for which employment only nationals of Mexico are eligible;

2. That the defendant have judgment against the plaintiff; and

3. That the defendant recover his costs. Costs taxed at \$42.00.

Dated this 11th day of August, 1953.

/s/ PEIRSON M. HALL,
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 11, 1953.

Docketed and Entered August 11, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Defendant Above Named and to His Attorney:

You Are Hereby Notified that the plaintiff above named hereby appeals to the Ninth Circuit of the Circuit Court of Appeals from that judgment and decree entered against him in the above-entitled proceeding.

/s/ JOHN F. SHEFFIELD,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 10, 1953. [57]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS ON
WHICH APPELLANT INTENDS TO RELY
ON APPEAL

To the Defendant Above Named and to His Attorney:

You Are Hereby Notified that the appellant intends to rely on the following points in the appeal filed by him on the above-entitled action:

1. That the court erred in decreeing judgment in favor of the defendant and against the plaintiff.

2. That the judgment in the above-entitled action is against the law and the evidence.

3. That the findings of fact and conclusions of law are not sustained by the evidence.

4. That the conclusions of law are not sustained by the findings of fact.

5. Errors committed by the court which prevented the plaintiff from having a fair and impartial trial.

Dated: Sept. 10, 1953.

/s/ JOHN F. SHEFFIELD,
Attorney for Plaintiff.

Endorsed]: Filed September 14, 1953.

In the United States District Court, Southern
District of California, Central Division

Civil No. 14488—PH

JESUS ELIZARRARAZ,

Petitioner,

vs.

JAMES T. McGRANERY, etc.,

Respondent.

Honorable Peirson M. Hall, Judge Presiding.

REPORTER'S TRANSCRIPT OF
CONFERENCE IN CHAMBERS

Los Angeles, California—March 9, 1953

Appearances:

For the Petitioner:

JOHN F. SHEFFIELD, ESQ.,
412 West Sixth Street,
Los Angeles 14, California.

For the Respondent:

WALTER S. BINNS,
United States Attorney,
Los Angeles 12, California, by
ROBERT K. GREAN,
Assistant United States Attorney.

(In chambers.)

The Court: Did you want to make a record on this matter?

Mr. Sheffield: I would like to make a record on it to this extent, that he knows that they were not citizens of Mexico because (1) he saw the birth certificate of one member of the police force——

Mr. Grean: That is immaterial to prove citizenship.

The Court: Let him finish.

Mr. Sheffield: And (2) that these persons declared that they were not citizens of Mexico to him.

The Court: Do you object to that on the ground that it is hearsay and immaterial?

Mr. Grean: I object on the ground it is hearsay and immaterial.

The Court: The offer of proof is rejected and the objection is sustained to it.

Mr. Sheffield: There is nothing in the record, and perhaps it is not important, but——

The Court: Just a moment, now. I can save you writing the letter.

See if I state the stipulation correctly:

It is further stipulated between the parties that if the plaintiff were called to the witness stand he would [2*] testify—what is it?

Mr. Sheffield: That he was asked his place of birth and he stated that he was born in Los Angeles.

The Court: And that at the time of his application to join the police force in Maxico City he was not asked the citizenship of his parents.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Sheffield: That is right.

Mr. Grean: So stipulated.

Mr. Sheffield: And he was only asked from where he had come, what part of Mexico he had come to when he came to the Federal District.

Mr. Grean: That he will so testify?

Mr. Sheffield: Yes.

The Court: And you will stipulate that he will so testify?

Mr. Grean: Yes.

The Court: And it is further stipulated that the parties may have 10 days within which to file simultaneous briefs and thereupon the matter will be submitted for decision.

Now you do not have to write any more letters, and that is it.

Mr. Sheffield: There is nothing in this affidavit of Mr. Stern covering this one point—and I have an expert witness who is prepared to testify as follows—that [3] Article 32 of the Constitution, as we have stipulated to, reads as it does, and that the regulations— —

Off the record.

(Here followed informal discussion outside the record.)

The Court: You will want that as a stipulation, that you have an expert by the name of Philip Newman who, if called, would testify—what?

Mr. Sheffield: That on June 1, 1942, there was a decree signed in Mexico by the President of the Republic suspending the guarantees—

The Court: The so-called civil liberties guarantees?

Mr. Sheffield: Yes, and a whole list of them—certain guarantees and certain articles of the constitution.

The Court: But that it did not specifically mention——

Mr. Sheffield: But made no reference to Article 32 and since the taking effect of the decree of June 1, 1942, there has never been any rule or regulation made modifying——

The Court: The previous regulations?

Mr. Sheffield: No, modifying Article 32, modifying a change in Article 32.

The Court: Or modifying the previous regulations with reference to Article 32?

Mr. Sheffield: That is right.

The Court: Will you stipulate to that?

Mr. Grean: I will stipulate to that as a [4] fact, that there were no regulations modifying Article 32 at any time since the promulgation of Article 32.

The Court: And that the president signed the decree suspending certain guarantees but did not specifically mention Article 32?

Mr. Grean: I don't know that the president signed such a decree, but I don't see that it is material so I will stipulate to that as a fact.

The Court: If you have a complete copy of the decree you can attach it to your brief and if you can stipulate I will take judicial notice of it.

Mr. Grean: All right.

The Court: Because you will have a chance to check it.

Mr. Grean: For this reason, I know Phil Newman, he is an attorney that we practiced against in this particular court and this district constantly, and I don't think he is any more qualified to state what the Mexican law is than Mr. Sheffield, whereas the qualifications of my expert are set forth. So for that reason I will stipulate that there has been no change, no amendment to Article 32, by decree or otherwise.

The Court: Will you agree that if he sets forth a copy of the decree that I may take judicial notice of it after you have had a chance to check it?

Mr. Grean: Yes, I will, your Honor.

Mr. Sheffield: You want that in English? [5]

The Court: Yes.

Mr. Grean: In fact, any law of Mexico that would contradict our contentions that counsel can find that he will set forth and I am able to check, I will stipulate to the introduction of them.

The Court: Very well.

Mr. Sheffield: I will be glad to submit those authorities.

The Court: Then why do you not do this, instead of 10 days simultaneous briefs, why not give you 10 days to file your opening brief?

Mr. Sheffield: I think the burden of proof has now shifted to the Government. They admit that the allegations of the complaint are true, and this is on the affirmative.

The Court: Then you can have 10 days to file

simultaneous briefs and 5 days to file replies, each of you.

Mr. Grean: That is satisfactory.

Mr. Sheffield: About this fellow Stern, counsel remarks that he doesn't know anything about the qualifications of Phil Newman. Stern, while he is a fine man and all, all he has are the books over in the library and he has no more.

Mr. Grean: You may raise any objections to the witness' sufficiency in your brief that you care to.

The Court: I can read foreign law too.

Mr. Grean: Will you stipulate to that, then? [6]

Mr. Sheffield: I didn't read this over. Did you read it over?

Mr. Grean: Yes. Take your time to read it, and here is a copy for your file. That is the one that we dictated together.

The Court: Give this to the clerk as the extra copy, then.

Very well.

(Whereupon, at 11:15 o'clock a.m., the conference was adjourned.)

[Endorsed]: Filed October 13, 1953. [7]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 60, inclusive, contain the orig-

inal Petition for Declaration of United States Nationality, etc.; Answer to Plaintiff's Complaint; Trial Stipulation; Order for Judgment; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal, Statement of Points on Appeal and Designation of Record on Appeal; which together with Reporter's Transcript of Proceedings on March 9, 1953, transmitted herewith constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the record on appeal come to the sum of \$2.00, which has been paid to me by appellant.

Witness my hand and the seal of said District Court this 14th day of October, A.D. 1953.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14083. United States Court of Appeals for the Ninth Circuit. Jesus Elizarraraz, Appellant, vs. Herbert Brownell, Jr., as Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern Division of California, Central Division.

Filed October 15, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.